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**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION**

ELLEN ROSENBLUM, Oregon Attorney
General,

3:20-cv-01161-MO

Plaintiffs,

v.

**UNOPPOSED MOTION FOR LEAVE TO
PARTICIPATE AS *AMICUS CURIAE*
AND MEMORANDUM IN SUPPORT
THEREOF**

JOHN DOES 1-10; the UNITED STATES
DEPARTMENT OF HOMELAND
SECURITY; UNITED STATES CUSTOMS
AND BORDER PROTECTION; the UNITED
STATES MARSHALS SERVICE and the
FEDERAL PROTECTIVE SERVICE,

Defendants.

CERTIFICATE OF COMPLIANCE

The City of Portland, through its undersigned counsel of record, certifies pursuant to
Local Rule 7.1 that it has conferred with Mr. Steven M. Lippold, counsel for Plaintiff Ellen

Page 1 – UNOPPOSED MOTION FOR LEAVE TO PARTICIPATE AS *AMICUS*
CURIAE AND MEMORANDUM IN SUPPORT THEREOF

Rosenblum, and with Mr. Andrew I. Warden, counsel for Defendants, who both indicated that their respective clients consent to the present motion.

MOTION

The City of Portland (“the City”) hereby respectfully moves this court for an order allowing it to appear and participate in this case as an *amicus curiae*, allowing it in that capacity to submit *amicus* briefs and memoranda to this court as circumstances may warrant.

MEMORANDUM

This court should grant the present unopposed motion to appear as *amicus curiae* because the City has a compelling interest in the outcome of the present case and significant factual and legal expertise that are relevant to this matter.

I. Legal Standard

This court has broad discretion to allow the appearance of *amici curiae*. *See Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982), *abrogated on other grounds by Sandin v. Conner*, 515 U.S. 472 (1995). “The classic role of *amicus curiae* * * * [is to assist] in a case of general public interest, supplementing the efforts of counsel, and drawing the court’s attention to law that escaped consideration.” *Miller-Wohl Co. v. Comm’r of Labor & Indus.*, 694 F.2d 203, 204 (9th Cir. 1982). “District courts frequently welcome *amicus* briefs from non-parties concerning legal issues that have potential ramifications beyond the parties directly involved or if the *amicus* has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.” *NGV Gaming, Ltd. v. Upstream Point Molate, LLC*, 355 F. Supp. 2d 1061, 1067 (N.D. Cal. 2005) (quoting *Cobell v. Norton*, 246 F.Supp.2d 59, 62 (D.D.C.2003) (internal quotation marks omitted).

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II. The City Has a Compelling Interest in the Outcome of this Case and Significant Expertise Related to this Matter.

This case involves a challenge by the Attorney General of Oregon to recent actions undertaken by Defendants in the City. The Complaint thus alleges, among other things, that “federal law enforcement officers [employed by defendants] have been using unmarked vehicles to drive around Portland, detain protesters, and put them into officers’ unmarked vehicles * * * without either arresting them or stating the basis for an arrest, since at least Tuesday, July 14.” (Complaint at ¶10) (Dkt. 1). It similarly alleges that “unidentified federal officers [employed by defendants] have likewise detained other citizens off the Portland streets, without warning or explanation, without a warrant, and without providing any way to determine who is directing this action.” *Id.* at ¶15. The Complaint claims that Defendants’ actions—which are all alleged to have taken place in the City—violate the First, Fourth, and Fifth Amendments of the United States Constitution, and “constitute a public nuisance because they unreasonably interfere with the general public’s right to public safety, public peace, public comfort, and public convenience.” *Id.* at ¶¶ 20-37.

Each of those allegations and claims intimately implicates and involves the City, and the City has a compelling interest in the safety and welfare of its residents. Indeed, the City has publicly opposed the very actions on the part of Defendants that are the subject of the present Complaint, both through the public statements of its Mayor and through written and oral arguments by its counsel in other cases pending in the District of Oregon. For example, Mayor Wheeler has publicly condemned “the violence federal officers brought to our streets in recent days, and the life-threatening tactics [federal] agents use,” and added, “We do not need or want their help.” (*see* <https://www.wweek.com/news/city/2020/07/14/mayor-ted-wheeler-calls-on-federal-officers-to-leave-portland-we-do-not-need-or-want-their-help/>) (accessed on 07/24/20). Earlier, Mayor Wheeler had publicly called for Defendants to follow the same crowd-control rules and follow the same restrictions on crowd-control devices as the City. (*see*

<https://www.oregonlive.com/news/2020/07/us-marshals-to-conduct-inquiry-over-protester-injured-by-federal-officer-wheeler-says.html>) (accessed on 07/24/20). The City filed a

memorandum to that effect in *Index Newspapers, LLC et al. v. City of Portland et al.*, supporting the plaintiffs' request in that case for a Temporary Restraining Order against Defendants Department of Homeland Security and Marshals Service, and the City orally argued in favor of such an order only yesterday. (See Oregon District Court Case No. 3:20-cv-1035-SI; Dkt. 70, 83).

In addition, the City has special knowledge and expertise that are relevant to the issues in this case. It is the City and its residents, more than any state agency, that have borne the brunt of Defendants' actions. City residents have been the most numerous victims of the First, Fourth, and Fifth Amendment violations alleged in the Complaint. And it is the City that has had to deal—and continues to deal, despite repeated requests—with the public nuisances and their attendant costs in City resources and personnel created by Defendants' actions. The City can therefore provide this court with a fuller picture of the events that have been happening, and are continuing to happen, with respect to Defendants' actions. And the City can assist this court by supplying it with further legal analysis that is directly informed by the City's daily dealing with Defendants' actions.

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III. Conclusion

In sum, the City has a strong interest in the present case and in ensuring that this court is presented with a complete picture as to facts and the correct rules of law that should apply. For those reasons, as explained above, this court should grant the City's motion for leave to appear in this case as *amicus curiae*.

Dated: July 24, 2020

Respectfully submitted,

/s/ Denis M. Vannier

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*Of Attorneys for Proposed Amicus Curiae
City of Portland*

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the State of Oregon. I am over 18 years of age and not a party to this action. My business address is 1221 SW Fourth Ave., Rm. 430, Portland, OR 97204.

I certify that on July 24, 2020, the foregoing UNOPPOSED MOTION FOR LEAVE TO PARTICIPATE AS *AMICUS CURIAE* AND MEMORANDUM IN SUPPORT THEREOF will be electronically mailed to all parties enrolled to receive such notice.

/s/Denis M. Vannier

Denis M. Vannier, OSB #044406
Senior Deputy City Attorney